

## DISCUSSION

On October 17, 1995, Kodak submitted to USTR and released to the media a preview of its November 6, 1995 rebuttal to Fujifilm's "Rewriting History." The submission was an attempt to give some credence to what thus far had been unsubstantiated statements to the media that retail film prices in Japan are twice as high as they are in the United States and that those prices have remained unnaturally stable over time. Kodak's hope, ultimately, is to prove that such high, stable prices in Japan are "evidence suggesting the lack of a freely operating market in Japan."<sup>1</sup>

On October 24, 1995, Fujifilm submitted its response to Kodak's pricing arguments. We explained the obvious failings in Kodak's analysis and offered our own pricing comparisons that showed that prices in the two markets are remarkably similar.

Specifically, we showed that:

- Kodak improperly compares the highest Japanese prices (photo shops) to the lowest U.S. prices (large retail chains) and compares the leading brand in Japan (Fuji) to a discount brand in the United States (Fuji).
- Kodak's price analysis also suffers because it focuses on the least aggressively priced film speed/packaging combination -- ISO 100/single pack.
- When a proper comparison is undertaken, taking into account differences in price structure at outlet types, prices in the two markets are actually quite similar, with U.S. prices in fact sometimes higher than Japanese prices.
- Kodak's price stability analysis fails to take account inflation. According to the figures cited by Kodak, real film prices actually fell 10 percent since 1990.

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<sup>1</sup> Kodak's October 17, 1995 submission at 1.

- Kodak's analysis of average unit values compares apples to oranges by failing to take account of differences in selling expenses and product mix in the two markets.

In its November 6, 1995 rebuttal to "Rewriting History," Kodak essentially reiterated its October 17 arguments and, in an appendix, attempted to rebut the arguments we made in our October 24, 1995 submission. Kodak maintains that the data it uses are above criticism and that Fujifilm's data "cannot be checked or independently verified by an objective outside observer."<sup>2</sup> Kodak went on to argue that its comparisons are legitimate and that they prove the existence of a protected Japanese market -- at least outside the competitive "shark tanks" of Tokyo and Osaka.<sup>3</sup>

In this submission, Fujifilm explains why USTR must dismiss Kodak's pricing comparisons and its criticism of Fujifilm's analysis. At the outset, Fujifilm welcomes a verification of its pricing data, which were collected in the normal course of business by independent market research firms. Upon such a verification, USTR would learn that the prices thus far presented by the two sides are in fact not very different and are generally supported by other independent sources.

The problem with Kodak's analysis is not so much the reliability of the data it uses, but rather the way in which Kodak uses it. Once a proper comparison is undertaken -- which cannot be done with the incomplete and unrepresentative data Kodak presents -- the truth comes out: film prices in Japan and the United States are similar. Furthermore, once areas

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<sup>2</sup> Kodak's November 6, 1995 submission at 22.

<sup>3</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P7-P9.

outside Tokyo and Osaka are included in a proper analysis, Kodak's claim of a closed market outside these cities falls to pieces.<sup>4</sup>

A. Fujifilm's Pricing Data Are Verifiable And, When Compared Appropriately, Are Similar To The Data Kodak Uses

In its attempt to discredit Fujifilm's pricing data, Kodak relies on the silly and untrue statement that "Fuji's only source is Fuji." The statement is silly because evidence based on internal company data is often the most probative in investigations of this kind; it is untrue because Fujifilm's price surveys were not internally generated, but were performed by independent, well-established market research firms acting in the normal course of business. Both the Japanese and U.S. survey firms involved -- Nippon Research Center, Ltd.<sup>5</sup> and

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<sup>4</sup> The analysis in this submission is confined to actual price data at the retail level. We believe that such actual data are far superior to average unit values for purposes of comparing relative prices in the Japanese and U.S. markets. In Japan, higher priced film products (e.g., ISO 400, single use cameras) are much more prevalent than in the United States, as are higher priced specialty outlets (i.e., camera stores). These differences invariably distort any comparison of aggregate figures, and any adjustments to attempt to correct these distortions are necessarily crude. Estimated average unit wholesale values are particularly useless, since no actual wholesale prices in either market have been provided in this investigation, and thus there is no basis for judging the reliability of estimated average values. At any rate, retail prices are publicly available and easily verifiable, and are ultimately dispositive of the degree of price competition enjoyed by consumers in the two markets.

<sup>5</sup> Kodak has apparently attempted to discredit data collected by Nippon Research -- appearing both in the October 24, 1995 pricing submission and the December 21, 1995 submission on the so-called "distribution bottleneck" -- by claiming that the market research firm is related to Fujifilm. It is true that Fujifilm owns a 5 percent equity share in Nippon Research and that Fujifilm's President Ohnishi sits on the firm's board of directors. But these facts do not change the conclusion that Nippon Research is an independent, third party market research firm. Indeed, Fujifilm is one of 20 large Japanese companies (including, among others, Toyota Motor, Nippon Steel, Toshiba, Asahi Beer, and Nomura Securities) owning stock in the company. Out of these 20 companies, 18 have representatives on Nippon Research's board; day-to-day operation of Nippon Research, though, is managed by "inside" board members, not outside members from affiliated companies. Many other companies are much larger clients of Nippon Research than is Fujifilm: the firm's sales of services to Fujifilm represent only 1 percent of its total sales.

Advance Marketing Services -- have provided price survey data to Fujifilm on a regular basis for years. Fujifilm relies on these data for normal business planning, and has done so since long before the initiation of this Section 301 investigation. Thus, Fujifilm has every economic incentive to ensure that the data it receives are accurate and representative of actual conditions in the Japanese and U.S. markets. In any event, the data provided by Fujifilm can easily be checked; Fujifilm would welcome a verification conducted by USTR (or any other fact-finding body) to demonstrate the validity of the information we have provided in this investigation.

In the meantime, Kodak should be careful in criticizing Fujifilm's supposedly suspect and unverifiable pricing data: once adjustments are made to compare apples to apples, the prices provided by Fujifilm and Kodak are practically the same.

Fujifilm provided Japanese prices for photo stores, supermarkets, and discount stores, as collected by Nippon Reserch Center("Nippon Research" or "NRC").

Unfortunately, the Japanese pricing data used by Kodak -- which was collected by the Government of Japan ("Government" or "GOJ") -- cannot be compared against all of Fujifilm's Japanese data because they are limited to photo shops only (a problem we address

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Whatever cloud Kodak may seek to place over Nippon Research's survey data, the fact is that the firm is one of the most highly respected research companies in Japan. The firm's president is Chairman of Nippon Marketing Research Association, a professional association with members comprising, among others, Japanese subsidiaries of Coca-Cola, P&G, Monsanto, American Express, Johnson & Johnson, and Phillip Morris. We note, too, that Nippon Research is affiliated with Gallup International, an association whose namesake is perhaps the single best known and respected survey firm in the world.

at length in Section B). To the extent that the data underlying Kodak's analysis overlaps with Fujifilm's data, however, they show very similar results.<sup>6</sup>

Figure 1 shows that the photo store prices reported in 1995 for the Tokyo and Osaka areas by Nippon Research and the GOJ (adjusted for tax neutrality)<sup>7</sup> are within 14 yen of one another. While Nippon Research found average photo shop prices of 444, the Government found prices of 458.<sup>8</sup> The minor difference could easily be attributed to the fact that the Government data used by Kodak do not include discount prices that might have been offered by the photo shops the Government surveyed. In the Annual Report on the Retail Price Survey, the GOJ's Management & Coordination Agency explains that in conducting the survey "normal" retail prices are collected and that, therefore, "low prices due to bargain, clearance,

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<sup>6</sup> For ease of reference, we provide in Exhibit 1, hereto, Figure 2 and Exhibit 2 from Fujifilm's October 24, 1995 submission. Note, however, that the data provided in that submission was limited to September 1994 and September 1995 data. In today's submission, we use data from other periods as well in order to show contemporaneous comparisons with the data Kodak provides.

<sup>7</sup> The GOJ's price data are tax-inclusive and therefore must be adjusted to compare prices with the tax-exclusive Nippon Research data. Annual Report on the Retail Price Survey, Statistics Bureau, Management & Coordination Agency, GOJ, 1994 at 31 (hereinafter "1994 Annual Report on the Retail Price Survey") (selected pages attached hereto as Exhibit 2).

<sup>8</sup> GOJ prices are based on data collected from January to September 1995 in the 59 cities listed in monthly editions of Photo Market 1995 (selected pages attached hereto at Exhibit 3). Equivalent Nippon Research data for the first three quarters of 1995 are used for the comparison.

Figure 1 also indicates that data collected by the two sources for full year 1994 show practically the exact same results, this time using an average GOJ price based on the 167-city data reported in the 1994 Annual Report on the Retail Price Survey at 527, 614, and 634 (attached at Exhibit 2).

discount sales, etc." are excluded (emphasis added).<sup>9</sup> Even assuming that application of this methodology had no significant impact on the Government's survey, the prices gathered by Nippon Research and the Government differ by the equivalent in the U.S. of 14 cents -- not a significant difference in price for a roll of film.

Additional data published annually in a photographic industry journal entitled Camera Times verify the accuracy of Fujifilm's Japanese pricing data.<sup>10</sup> As shown in Figure 2, while the Nippon Research data relied upon by Fujifilm showed an average price of 440 yen in Tokyo and Osaka photo shops in March 1995, Camera Times found an average price of 450 yen during the same period -- a difference of only 10 yen.<sup>11</sup>

The story appears to be the same with respect to U.S. prices. Fujifilm reported U.S. price data for photo shops, supermarkets, and discount stores collected by Advance Marketing Services ("AMS"), an independent market research firm regularly used by Fujifilm. Kodak did

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<sup>9</sup> 1994 Annual Report on the Retail Price Survey at 677 (Exhibit 2 hereto). Note, as discussed below, that this contrasts with the presence of promotional prices in the U.S. data Kodak uses.

<sup>10</sup> Exhibit 4 contains copies of sample pages from the 1995 edition of Camera Times, an explanation of the publication's survey methodology, and a spreadsheet containing pricing data for years 1990 through 1995. We did not use the Camera Times data in our October 24, 1995 submission because they provide an incomplete basis for proper analysis -- in particular, they provide prices only at photo stores, and not at discount stores or supermarkets. We include the data here simply for purposes of corroborating the accuracy of Nippon Research's data.

<sup>11</sup> Note that the comparison here is somewhat imprecise; while Camera Times breaks out pricing data for Tokyo, it does not do so for Osaka. Therefore, the Kinki region is used as a proxy for comparisons with the Nippon Research data for the Osaka area.

Note also in Figure 2 that the difference in prices between the stores surveyed by Camera Times and those surveyed by Nippon Research in 1994 was also small. Whereas Camera Times calculated an average price of 464 yen for Tokyo/Kinki in 1994, Nippon Research survey data show an average price in the Tokyo/Osaka areas of 442.

not bother to present USTR with U.S. photo shop prices -- the subject of greater discussion in Section B -- but it did present A.C. Nielsen Co. data for supermarkets and mass merchandisers (i.e., discount stores). Nielsen data are not representative of all stores in these categories given that Nielsen relies solely on stores that use "scanners" to determine price.<sup>12</sup> Therefore, a comparison with AMS, which collects prices from both scanning and non-scanning stores, is necessarily skewed. However, if one limits the comparison to discount stores, almost all of which use scanners, the AMS and Nielsen data appear to confirm one another. As shown in Figure 3, AMS shows prices from September 1994 to June 1995 hovering between \$2.50 and \$3.00.<sup>13</sup> The Nielsen mass merchandiser data provided by Kodak for the same period show the same range of prices.<sup>14</sup>

Fujifilm and Kodak, therefore, do not differ considerably with respect to the accuracy of the pricing data presented for photo shops in Tokyo and Osaka or for discount stores in the

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<sup>12</sup> This is the reason Fujifilm decided not to use Nielsen data in its pricing submission on October 24, 1995 -- the data were too limited, based only on large stores with scanners. We were also told by Nielsen officials that they have a standard prohibition against the use of their data in litigation. We wonder whether this same prohibition applied to Kodak.

<sup>13</sup> Note that overall average prices are shown in Figure 3, including both promoted and non-promoted prices. This stands in contrast to the data used by Kodak for Japan which include only non-promoted prices. See 1994 Annual Report on Retail Price Survey at 677 (Exhibit 2).

<sup>14</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P8 (Figure P-4)

United States. The issues upon which we disagree are: (1) whether the data Kodak presents are representative of the overall Japanese and U.S. markets, and whether its comparisons based on those data are methodologically valid; (2) whether price competition outside Tokyo and Osaka is basically nonexistent, as Kodak suggests; (3) whether prices have been "extraordinarily stable" over time. We address these issues in detail in the sections below.

B. The Pricing Data Used By Kodak Are Not Representative Of The Japanese Or U.S. Markets For Film And Its Comparisons Based On Those Data Are Therefore Misleading

Kodak compares selected Japanese and U.S. prices to support its argument that film prices in Japan are appreciably higher than in the U.S. and other major markets. But in both Japan and the U.S., film prices cover a broad range; accordingly, price comparisons can produce any result you want if you are sufficiently manipulative about which prices you compare.

This is what Kodak has done. In the Japanese market, it has systematically ignored all segments of the Japanese market where price competition is most vigorous: it has ignored discount outlets (including supermarkets and large retail chains), it has ignored ISO 400 speed film, and it has ignored multipacks. In the U.S. market, it has ignored the higher prices in camera stores, and -- by failing to compare leading brand to leading brand -- it has ignored the premium prices of its own brand. The results of Kodak's comparisons therefore reveal nothing about the relative price levels in the two countries; all they reveal is the systematic bias guiding Kodak's selection of pricing data.

1. The Japanese prices Kodak uses cover only photo shops with relatively high prices

Kodak claims that the Japanese pricing data it uses -- prices derived from a Japanese Government survey of photo stores -- are representative despite the fact that they are based on only one type of outlet. Kodak argues that photo stores covered 56 percent of all film sales in Japan in 1992, and were the single largest outlet type by a 2:1 margin in 1994.<sup>15</sup> What Kodak does not say, but what is obvious from its own rationalization, is that the data it uses exclude half the market. For the same reason photo stores are significant because they represent half the market, so too is the other half of the market significant.

What Kodak also tries to hide in its rationalization is the fact that, as in most other countries around the world, specialty shops are falling in popularity in Japan. While they accounted for 56 percent of the market in 1992, their share dropped to 50 percent in 1994.<sup>16</sup> Meanwhile, discount stores and supermarkets had grown to a collective 23 percent of the market by 1994.<sup>17</sup> Kodak cannot claim that nearly a quarter of the market is insignificant. It is convenient for Kodak to ignore these outlet types, of course, because, as in the U.S., their cost structures allow them to pursue a marketing strategy of pricing more aggressively than smaller, specialized photo shops.

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<sup>15</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P1. In 1994 photo stores accounted for 50 percent of film sales according to the source cited by Kodak. Photo Market 1995 at 130.

<sup>16</sup> Photo Market 1995 at 130.

<sup>17</sup> Id. Department stores are also included in this 23 percent, but sales of film at department stores in Japan are negligible.

The methodology of excluding discount stores and supermarkets (and discount prices at regular photo store outlets)<sup>18</sup> from pricing surveys -- followed historically by the Government of Japan and used opportunistically by Kodak -- has been criticized strongly in Japan for presenting a distorted picture of price levels and trends.<sup>19</sup> Indeed, due to widespread criticism, a draft report was released early in 1995 reflecting the Government's intent to make changes to its survey methodology.<sup>20</sup> Among the changes are inclusion of discount stores and private brand goods in the survey.<sup>21</sup> Thus, the methodology used by Kodak has been officially repudiated.

Because Kodak limits its analysis of Japanese prices to photo store prices, Kodak is unable to compare prices in each major outlet type in Japan to prices in the corresponding outlet type in the United States. Instead, Kodak compares photo specialty shop prices in Japan to prices collected by A.C. Nielsen in the United States.<sup>22</sup> Nielsen does not collect

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<sup>18</sup> As discussed in Section A above, the GOJ only collects "normal" prices and specifically excludes "low prices due to bargain, clearance, and discount sales, etc." Annual Report on the Retail Price Survey at 677 (Exhibit 2).

<sup>19</sup> See, e.g. "Minister Dismisses MITI Survey of International Phone Rates," Kyodo News International (December 12, 1994) (Government minister criticizing MITI's price survey for not including discount rates); see also "Averting an Automotive Trade Wreck with Japan," Heritage Foundation Reports (May 26, 1995) (indicating that economists widely acknowledge that the Japanese consumer price index overstates prices by excluding discount retailers from its price surveys); see also "Retail Prices Lower than in Official Survey," Japan Economic Newswire (May 16, 1994) (presenting MITI's survey which illustrates that the monthly consumer price index issued by the Japanese government is not reflective of the actual retail price trends in Japan because it does not include the large number of discounters).

<sup>20</sup> See Nihon Keizai Shinbun, February 10, 1995 (a translation appears in Exhibit 5).

<sup>21</sup> Id.

<sup>22</sup> See Kodak's November 6, 1995 submission at 28, Figure 3.

prices from photo shops, however, because it uses "scanner" data, i.e., data collected from stores that use scanners to determine the price of the merchandise purchased by the final consumer. Prices collected by Nielsen are, therefore, prices at mass merchandisers and large supermarket and drug store chains -- stores that sell film for less than do photo stores.<sup>23</sup> Given this slanted comparison, it is inevitable that the price data offered by Kodak show a large disparity in prices between the United States and Japan: they compare the lowest prices in the U.S. with the highest prices in Japan.

Kodak defends its mismatched comparison and argues that outlet type to outlet type comparisons are not necessary or appropriate. Kodak says that comparing similar outlet types with one another "makes little sense when the share of film distributed by different outlet types varies so dramatically from country to country."<sup>24</sup> But this is precisely the reason why outlet type to outlet type comparisons are necessary in this case: the difference between Japan and the U.S. in the relative importance of various outlet types is the very reason why comparing largest outlet type to largest outlet type -- photo stores in one, discount stores in another -- produces such a distorted comparison. This phenomenon is illustrated in Figure 4 in which Kodak's faulty analysis is applied to U.S. photo shops and

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<sup>23</sup> Kodak admits to this failing in the Nielsen data. Figure P-4 in the Pricing Appendix of Kodak's November 6 submission shows the three outlet types covered by the Nielsen data. Kodak's claim that Nielsen surveys outlet types that cover 83 percent of the U.S. market comes from a sum of percentages that appear in Figure P-1 in the Pricing Appendix: 48 percent for discount stores and warehouse clubs; 22.9 percent for drug stores; and 12.3 percent for supermarkets. Kodak's November 6, 1995 submission, Pricing Appendix, at P4 and P8.

<sup>24</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P3.

Japanese discount stores. As expected, the U.S. appears to be the protected, high priced market.

In both markets, different outlet types represent different segments of the market. In Tokyo -- where Kodak concedes price competition is vibrant -- higher priced camera stores exist alongside bargain basement discount outlets. Each outlet type serves a different segment of the market: camera stores cater to service-conscious consumers, while discount outlets attract price-conscious consumers. These outlet types are thus selling different things (product plus service vs. product at the cheapest possible price) to different people (service-conscious vs. price-conscious consumers). The same segmentation exists in the United States -- the only difference is the size of the segments.<sup>25</sup> It makes no economic sense in such segmented

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<sup>25</sup> The fact that the service-conscious segment is larger in Japan is unsurprising, given the strong reputation of Japanese consumers as traditionally more service-oriented. A number of studies have been published on the typical Japanese consumer's service-oriented nature and how the market caters to this characteristic. As one study states, Japanese customers "have very high demands for top-quality products and services" seeking, for example, "high-cost packaging and efficient after-sales servicing." James Goodnow, Rustan Kosenko, "Strategies for Successful Penetration of the Japanese Market: How to Beat Japan at its Own Game," 7 Journal of Business and Industrial Marketing 1, Winter 1992 at 41-49. Other published studies have commented on the fact that Japanese buyers are typically "demanding," that they demand "high levels of service, quality and freshness," and that there exists in Japan "high levels of service, after-sales support, product information, packaging, delivery, cleanliness, salespeople attitudes and rich shopping environment" to satisfy the typical Japanese consumer. See Arieh Goldman, "Evaluating the Performance of the Japanese Distribution System", 68 Journal of Retailing 1, Spring 1992 at 11-39; see also Gary Anthes, "Dealing in Japan: Tough, but Worth It," 26 Computerworld 8, February 24, 1992, at 109. Moreover, the Japanese consumer has been known to be particularly selective and discriminating in the photographic products market. As noted in one study, "[t]raditionally, the Japanese have been much more involved in photography than people in most other countries. They are considered shrewd and critical consumers of photographic products." Robert J. Thomas, New Product Success Stories: Lessons from Leading Innovators 270-279 (1995).

markets to compare Japanese prices in one market segment to U.S. prices in another. Such comparisons mismatch prices of different economic goods.<sup>26</sup>

Kodak argues, though, that there is no real market segmentation in the United States. Kodak says that price gaps do not exist between outlet types in the U.S., and that the existence of such price gaps in Japan is the very reason Kodak filed its Section 301 petition. The price gaps in Japan are Fujifilm's fault and are not a reason to alter the comparison.<sup>27</sup>

But Kodak offers no evidence to support its claim that price gaps between different outlet types do not exist in the United States. By contrast, Fujifilm has produced evidence that shows that such gaps do exist and are greater than the gaps between outlet types in Japan. Indeed, Fujifilm's data for September 1994 and September 1995 show a gap of one U.S. dollar or more between Kodak's ISO 100 film prices at U.S. photo stores and prices at U.S. discount stores.<sup>28</sup> See Figure 5 for documentation of this point. Moreover, Kodak's

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<sup>26</sup> Other U.S. agencies enforcing unfair trade laws have recognized the need to account for market segmentation in making proper comparisons between competing products. Specifically, the issue arises in antidumping investigations when the U.S. International Trade Commission must determine the effect of imports on domestic production. See e.g., Disposable Lighters from Thailand, Inv. No. 731-TA-701 (Final), USITC Pub. No. 2876 (April 1995) at I-9; New Steel Rails from Japan, Luxembourg, and the United Kingdom, Inv. Nos. 731-TA-557-559 (Preliminary), USITC Pub. No. 2524 (June 1992) at 17; Mechanical Transfer Presses from Japan, Inv. No. 731-TA-429 (Final), USITC Pub. No. 2257 (February 1990) at 11, n.23. The International Trade Commission has recognized that comparing prices in different market segments can be inappropriate. See Certain Telephone Subassemblies from Japan and Taiwan, Inv. No. 731-Ta-426, 428 (Final), USITC Pub. No. 2237 (November 1989) at 40-41.

<sup>27</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P3.

<sup>28</sup> Fujifilm's October 24, 1995 submission, Exhibit 2 (Exhibit 1 hereto). A simple survey performed within the past week in the Northern Virginia suburbs of Washington comparing prices at a Ritz Camera Center and a K-Mart in the same vicinity also showed a significant price gap: Kodak's ISO 100 single packs were \$3.96 at K-Mart versus \$4.69 at Ritz; Kodak's ISO 400 single packs were \$4.97 at K-Mart versus \$5.99 at Ritz. Exhibit 6 contains copies of receipts showing the price paid on each purchase.

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entitled "In the U.S. Market Film Prices Do Not Vary Significantly by Outlet Type" shows precisely the opposite of what Kodak intends to depict.<sup>29</sup> Kodak's data (notwithstanding their limitations) appear to show that in September 1994 Fuji brand ISO 100 film sold at about \$3.20 at Food & Combo stores and about \$2.20 at drug stores -- a 45 percent spread.<sup>30</sup> What consumer would consider as insignificant a difference of a dollar on a product that sells for under \$5.00?

Finally, Kodak argues that its exclusive reliance on Japanese photo store prices is justified by the fact that the "discount stores Fuji refers to are relatively rare outside of Tokyo and Osaka."<sup>31</sup> As shown in Section I.C. below, however, Kodak's assertion is factually baseless. Stores selling low-priced film are present throughout Japan, not just in Tokyo and Osaka. It is therefore impossible to get a clear picture of pricing patterns in Japan as a whole without including discount outlets in the analysis.

Kodak's attempts to defend its apples-to-oranges price comparisons are thus a complete failure. In both Japan and the United States, different outlet types have different price structures, not because of anticompetitive conspiracies, but because of obvious differences in cost structures and marketing strategies. In both countries, then, there are different market segments, and -- importantly -- different price levels for each market segment. By comparing prices in Japanese photo stores to prices in U.S. discount chains, Kodak is attempting to fool USTR into confusing price differences between market

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<sup>29</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P8 (Figure P-4).

<sup>30</sup> Id. Similar differences continue in Kodak's data through June 1995.

<sup>31</sup> Kodak's November 6, 1995 submission at P1.

segments with price differences between countries. As Fujifilm has shown, within each outlet type pricing patterns in the U.S. and Japan are very similar. What is different between the two markets is the relative importance of different outlet types -- i.e., the size of the different market segments. But this difference in market structure -- the fact that discount chains are more popular in the U.S. than Japan -- is neither evidence of anticompetitive conduct nor a market barrier in itself, and ought to be totally irrelevant to this case.<sup>32</sup>

The bottom line is that Kodak has cherry picked the prices in both markets that best suit its purposes. But Kodak's efforts are at cross-purposes with USTR's goal to discern the truth. The way to get to the truth is to use common sense and compare comparable prices. This is the approach Fujifilm has taken. When such comparisons are undertaken -- as Fujifilm did in its October 24, 1995 submission -- Kodak's claims fall to pieces.

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<sup>32</sup> See Fujifilm's December 21, 1995 submission at 12-15. Recall that in Germany, too, photo shops represent 40 percent of film sales. Id. at 13, n. 13. The predominance of discount stores in the U.S. is the oddity, not photo shop dominance in Japan.

2. Kodak fails to compare leading brand to leading brand

Even assuming Kodak had the data necessary to make price comparisons on a similar store type to similar store type basis, its analysis would also have to be adjusted to compare leading brand to leading brand. If the point of the inquiry is to determine whether film, as a product, sells for different prices in the two markets, it does not make sense to compare the leading national brand in one market to a brand that, by necessity, sells at a discount relative to the leading brand in another market. By comparing Fuji brand film in Japan to Fuji brand film in the U.S., Kodak is able to show premium prices in Japan<sup>33</sup> and discount prices in the United States.<sup>34</sup>

Kodak knows this is the case: while its lawyers mention in passing Fujifilm's leading brand to leading brand argument, they offer no defense of their leading brand to discount brand comparison. Kodak and its lawyers are not helping USTR get to the truth.

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<sup>33</sup> Actually, the GOJ survey data do not specify brand -- they include both Fujifilm and Konica prices. See Kodak's November 6, 1995 submission, Pricing Appendix, at P2. Given Fujifilm's market share, however, it is reasonable to conclude that Fujifilm prices predominate.

<sup>34</sup> Fuji brand film generally is sold at a discount relative to Kodak in the United States; furthermore, the U.S. price data used by Kodak appear to be based on Fujifilm's secondary, cheaper brand, which is not even sold in Japan. Fujifilm's October 24, 1995 submission at 4.

3. Kodak compares pre-tax prices in the U.S. with post-tax prices in Japan

Kodak's comparison is further flawed in that it compares tax-burdened prices in Japan to pre-tax prices in the United States. As discussed earlier in Section A, the government data Kodak uses for Japanese prices include taxes; the Nielsen data do not. Therefore, Kodak again compares high, tax-inclusive prices in Japan and low, tax-exclusive prices in the United States. (By contrast, the Nippon Research and AMS data provided by Fujifilm offer pre-tax prices in both markets.) Kodak's approach does not help USTR get to the truth.

4. Kodak's choice of film speed and packaging fails to tell the whole story

Kodak admits that its comparisons cover only ISO 100 film and only single pack packaging. It attempts to justify this limited product/packaging combination by saying that (1) ISO 100 film was the most popular film speed sold in Japan from 1990 to 1994,<sup>35</sup> and (2) single pack sales outnumbered multipack sales by a 9 to 1 ratio in 1990.<sup>36</sup>

With regard to ISO 100 film, Kodak conveniently neglects to mention that this film speed's share of the Japanese market has been plummeting in recent years. ISO 100 film accounted for 84.8 percent of the market in 1988, but by 1994 had fallen to 47.5 percent. Over the same period ISO 400 was soaring, jumping from only 9.3 percent in 1988 to 47.5

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<sup>35</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P11.

<sup>36</sup> Id. at P3.

percent in 1994.<sup>37</sup> At present, ISO 400 film has overtaken ISO 100 as the most popular film speed in Japan.<sup>38</sup> Given that ISO 400 speed film is also an important product in the United States -- representing nearly 20 percent of sales in 1994 -- it is unclear why Kodak would choose to ignore this film speed, particularly when it is clearly the hottest film product in Japan.

Indeed, since its introduction, Fujifilm has been aggressively promoting ISO 400 film in an effort to encourage consumers to switch from the slower ISO 100 film.<sup>39</sup> In accordance with this strategy, ISO 400 film prices have been relatively low, while ISO 100 prices have been relatively high. Although ISO 400 prices are generally higher than ISO 100 prices in both Japan and the U.S., the gap between the two is smaller in Japan than in the United States. Figure 6 depicts the price gaps between ISO 100 and ISO 400 in the two markets. Accordingly, although Fujifilm's ISO 400 is still more expensive than its ISO 100 film, it is the more aggressively priced product because the gap in price between 100 and 400 speed films is

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<sup>37</sup> Photo Market 1995 at 98; "Rewriting History" at Exhibit 21.

<sup>38</sup> Fujifilm salespeople estimate that ISO 400 film accounted for 52 percent of Fujifilm's total color negative film sales during the first half of fiscal year 1995 (April-September 1995), as compared to 45 percent for ISO 100 film.

<sup>39</sup> Kodak knows this is the case. In responding to Fujifilm's arguments that Kodak has fallen behind on innovations in the consumer film market, Kodak states that Fujifilm "changed its pricing structure to attract consumers into the 400-speed segment and away from Fuji's own 100-speed film." Kodak's November 6, 1995 submission at 96-98.

small.<sup>40</sup> By relying exclusively on ISO 100 film, Kodak's Japanese price data are based on a declining product and are therefore unrepresentative of current overall market conditions.

Kodak's claim that multipacks represent only a small portion of the market is old news. Of Fujifilm's total ISO 100 speed film sales in the first half of fiscal year 1995, 47 percent were in the form of multipacks; of its total ISO 400 film sales during the same period, 58 percent were in the form of multipacks.<sup>41</sup> To suggest that multipacks are an insignificant part of the market is to ignore reality: multipacks accounted for nearly 40 percent of Japanese film sales by the end of 1994.<sup>42</sup>

More importantly for these purposes, to ignore multipack prices is to ignore a leading form in which low-priced film is offered for sale in Japan. As Kodak and Fujifilm have both shown, the per-roll price of multipack film is always lower than the price of a single roll of film, regardless of the market.<sup>43</sup> Indeed, as shown in Figure 7, the gap is appreciably larger in

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<sup>40</sup> Indeed, in 1995, ISO 400 film was cheaper in photo stores in Japan than in discount stores in the United States. Fujifilm's October 24, 1995 submission, Exhibit 2 (Exhibit 1 hereto). Thus, for ISO 400 film, Kodak's arguments are wrong even when outlet types are mismatched.

<sup>41</sup> See Exhibit 7.

<sup>42</sup> This 40 percent figure is derived using 1994 market share figures for ISO 100 and ISO 400 film: (47.5 percent x 29 percent) for ISO 100 plus (47.5 percent x 52 percent) for ISO 400 equals 38.5 percent. See Exhibit 7 hereto; Photo Market 1995 at 98; "Rewriting History" at Exhibit 21. This calculation is based on the conservative assumption that the percentage of Fuji brand film sold in multipacks is representative of other brands. This estimate of multipack market share is corroborated by independent survey results. A survey of 190 photo store outlets throughout Japan in December 1995 by Management Information Services shows that multipacks accounted for 55.7 percent of ISO 100 film sales, and 70.6 percent of ISO 400 film sales. Management Information Services is an independent market research firm unrelated to Fujifilm.

<sup>43</sup> See Fujifilm's October 24, 1995 submission, Exhibit 2 (Exhibit 1 hereto); Kodak's November 6, 1995 submission, Pricing Appendix, at P7, n. 12.

Japan than in the United States.<sup>44</sup> Accordingly, exclusion of multipack sales from price comparisons will inevitably overstate the relative level of Japanese prices.

Taken together, the film speed/packaging combinations ignored by Kodak -- ISO 100 multipacks and ISO 400 single packs and multipacks -- accounted for over 60 percent of Japanese film sales in 1994.<sup>45</sup> Moreover, as discussed above, the prices of these products are lower in Japan than the U.S. even when Japanese photo store prices are compared to U.S. discount store prices. Kodak is purposefully hiding the ball from USTR. Fujifilm's point here is not that it wishes to compare across product or packaging classifications, or to analyze only ISO 400 or only multipacks.<sup>46</sup> On the contrary, we only ask that USTR look at a representative set of data in which apples are compared to apples in order, ultimately, to get to the truth.

In conclusion, Kodak's comparisons should be dismissed by USTR. They prove nothing except that photo stores in Japan sell one of several consumer film products at higher prices than that product is sold in discount stores in the United States. So what?

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<sup>44</sup> Here again, in 1995 multipack prices for both film speeds were cheaper in Japanese photo stores than in U.S. discount stores. Fujifilm's October 24, 1995 submission, Exhibit 2 (Exhibit 1 hereto). Thus, analysis of multipack prices disproves Kodak's argument even when outlet types are mismatched.

<sup>45</sup> This figure is derived as follows: (29 percent x 47.5 percent) for ISO 100 multipacks plus 47.5 percent for all ISO 400 film is 61.3 percent. See Exhibit 7 hereto; Photo Market 1995 at 98; "Rewriting History" at Exhibit 21.

<sup>46</sup> Kodak states that "Fuji's sample is based on individual rolls of film taken from multipacks." Kodak's November 6, 1995 submission, Pricing Appendix, at P3. Someone on Kodak's "dream team" did not read very carefully. The only place where Fujifilm compared prices on such a limited basis was when we showed that it was possible to cherry pick from the data to come up with a mirror image of Kodak's analysis. Fujifilm's October 24, 1995 submission at 5. If Kodak's lawyers had read Fujifilm's entire submission, or simply looked at Figure 2 on page 7 (Exhibit 1 hereto), they would have seen that Fujifilm compared prices by outlet type and by four different product/packaging combinations. Kodak's statement is just false.

C. Price Data From All Over Japan Confirms The Accuracy Of Fujifilm's Pricing Analysis

Having established that Kodak's price comparisons are methodologically invalid, the question remains whether Fujifilm's comparisons are sound. In particular, Kodak criticizes Fujifilm's Japanese price data because they all are drawn from outlets in Tokyo and Osaka. Kodak argues that these two cities are not representative of the overall Japanese market. First, they account for only 30 percent of film sold in Japan. Furthermore, according to Kodak, discount outlets are practically nonexistent outside of these two cities, and thus price competition is essentially moribund. Kodak concedes that Tokyo and Osaka are "competitive shark tanks" in which price competition is vigorous. Elsewhere in Japan, though, Kodak claims things are very different.<sup>47</sup>

Kodak is thus accusing Fujifilm of its own methodological sin: cherry picking prices to produce the desired result. As we will show, though, Kodak's counterclaim lacks merit. The Nippon Research data used by Fujifilm are indeed representative of the overall Japanese market. Price competition is not limited to Tokyo and Osaka: discount outlets and low-priced film are available all over Japan.

1. The Nippon Research data are representative of prices all over Japan, not just Tokyo and Osaka

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<sup>47</sup> Kodak claims in its November 6 submission that Fujifilm "seeks to focus attention on the competitive 'shark tank' in the big cities" and that Tokyo and Osaka "are relatively competitive areas within Japan where multiple brands -- including imported film -- are available for purchase." Kodak's November 6, 1995 submission at 31 and Pricing Appendix at P9.

As Fujifilm explained in its October 24, 1995 submission, the Japanese price data it used to compare to U.S. prices were derived from a regular monthly survey of 32 retail outlets in Tokyo and Osaka. This survey is conducted by Nippon Research, a market research firm that is associated with Gallup International.<sup>48</sup> Kodak complains that these data are not trustworthy because, being restricted to Japan's two largest cities, they cover only a small fraction of the market, and -- according to Kodak -- a highly unrepresentative fraction at that. Kodak asserts that, while price competition in Tokyo and Osaka is admittedly robust (and prices therefore low), the rest of Japan is very different.

- a. The outlets and chains included in the Nippon Research surveys cover most of Japan

Regarding the Nippon Research survey's coverage of the market, Kodak notes that, according to Photo Market 1995 data, Tokyo and Osaka account for only 30.29 percent of film sold in Japan.<sup>49</sup> Actually, while most of the 32 outlets included in the Nippon Research survey are located in Tokyo and Osaka, several are located in neighboring prefectures -- one in Kanagawa and four in Hyogo.<sup>50</sup> Thus, the outlets physically surveyed by Nippon Research are located in prefectures accounting for 40 percent of total film sales in Japan.<sup>51</sup>

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<sup>48</sup> Fujifilm's October 24, 1995 submission at 5; Fujifilm's December 21, 1995 submission at 26.

<sup>49</sup> Exhibit 8 (using page 204 of Photo Market 1995 to determine film sales by prefecture).

<sup>50</sup> The December 1995 Nippon Research survey results in Exhibit 9 show the location of the stores surveyed.

<sup>51</sup> Exhibit 8 (showing that Hyogo and Kanagawa account for 9.5 percent of Japan film sales). In its October 24, 1995 submission, Fujifilm indicated that the Tokyo and Osaka areas -- i.e., the Kanto and Kansai regions -- account for 60 percent of total film sales in Japan. In this submission we provide evidence that shows that the Nippon Research price data are representative not only of Kanto and Kansai price levels, but of price levels throughout Japan.

The true coverage of the Nippon Research survey, though, extends far beyond the cities and prefectures in which the 32 specific outlets surveyed are located. Many of the 32 outlets are members of multi-store regional or nationwide chains. Since film pricing within these chains is relatively uniform across outlets, the price data from these chain store outlets actually represent a much broader section of Japan.

For example, consider the following chains that have outlets included in the monthly Nippon Research survey: Kitamura (a camera store) and Daiei, Jusco, and Seiyu (supermarkets). As shown in Figure 8, these chains are located throughout Japan, especially in those areas where film sales are most heavily concentrated. Kitamura has 247 outlets in 36 prefectures (which account for 65 percent of total film sales); Daiei has 358 outlets in 43 prefectures (which account for 96 percent of total film sales); Jusco has 249 outlets in 33 prefectures (which account for 86 percent of total film sales); and Seiyu has 210 outlets in

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prefectures (which account for 77 percent of total film sales).<sup>52</sup> Thus, these chains collectively have outlets all over Japan in areas accounting for the vast bulk of film sales.<sup>53</sup>

Moreover, prices at these chain outlets outside Tokyo and Osaka do not vary appreciably from prices in those cities. In January 1996, Fujifilm commissioned Marketing Intelligence Corporation ("MIC"), an independent market research firm with no relation to Fujifilm, to survey Fuji brand film prices at Kitamura, Daiei, Jusco, and Seiyu outlets at representative cities throughout Japan. As shown in Figure 9, Daiei prices are both highly uniform and consistent with the most recent available Nippon Research data.<sup>54</sup> Exhibit 10 provides data for the other outlets and shows similar results.

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<sup>52</sup> The figures for percentage of total film sales accounted for by prefectures are derived from Photo Market 1995 at 204 (Exhibit 8 hereto). The point of these percentages is to show that these chains are located in areas accounting for the vast bulk of the total Japanese film market.

<sup>53</sup> Many other of the 32 outlets are members of multi-store chains. For example, Kimura, a camera store chain, has 51 outlets in 8 prefectures; Koide, another camera store chain, has 67 outlets in 6 prefectures; Yodobashi, a discount chain, has 13 outlets in 7 prefectures; Keiyo, a discount store, has 95 outlets in 9 prefectures; and Topos, another discount store, has 27 outlets in 13 prefectures. Indeed, as shown in Exhibit 9, 16 of the 32 outlets surveyed by Nippon Research are members of multi-store chains with outlets outside the Tokyo and Osaka areas (i.e., including Kanagawa and Hyogo prefectures as well as Tokyo and Osaka proper).

<sup>54</sup> These Nippon Research data are from December 1995. The complete Nippon Research data for December 1995 are provided in Exhibit 9.

- b. Prices throughout Japan are similar to prices in Tokyo and Osaka

As another test of the Nippon Research data, in December 1995 Fujifilm salespeople surveyed the three largest film outlets in 10 representative cities from all areas of Japan. Figure 10 shows the location and population of the 10 surveyed cities. These 30 different outlets break down as follows: five discount stores, four supermarkets, and 21 camera stores. Figure 11 compares the average photo shop prices for Fuji and Kodak brand film collected in the 10-city survey to photo shop prices in the December 1995 Nippon Research survey.<sup>55</sup> The figure demonstrates that prices outside Tokyo and Osaka are similar to prices in those two cities. Once again, Kodak's charge that Tokyo and Osaka are somehow unique is belied by the facts.

From wearying experience we can anticipate that Kodak, when confronted with the results of the MIC and 10-city Fujifilm surveys, will reply that "Fuji's only source is Fuji." The argument is infantile, since retail prices at all of these outlets are publicly available facts that can be checked by anyone who bothers. Nevertheless, it is also the case that published data -- including that relied upon by Kodak -- corroborate Fujifilm's point.

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<sup>55</sup> The complete price data from this 10-city survey are provided in tabular form in Exhibit 11. As mentioned above, the complete Nippon Research price data for December 1995 are provided in Exhibit 9.

First, the survey data published in Camera Times show prices outside the Tokyo and Osaka areas to be quite similar to the "shark tank" prices inside Tokyo and Osaka.<sup>56</sup> As shown in Figure 12, while Camera Times calculates an average price in 1995 of 450 yen for ISO 100 film (single pack) in Tokyo and Kinki (including Osaka) photo shops, it calculates an average price outside those cities of 463 yen -- the equivalent in the U.S. of a 13-cent difference.<sup>57</sup> Indeed, Figure 13 shows that Camera Times calculates average prices of 440 yen and 449 yen in the remote Shikoku and Kyushu regions, respectively -- lower prices than in the "shark tanks" of Tokyo and Osaka.

These numbers should come as no surprise to Kodak. The GOJ data on which Kodak relies show that while the average photo store price of a roll of film inside Tokyo and Osaka during the first three quarters of 1995 was a tax exclusive 458 yen (450 yen and 466 yen, respectively), prices outside of Tokyo and Osaka during the same period were on average 475 yen -- a mere 17-cent difference.<sup>58</sup> In 1994, the GOJ calculated an Osaka/Tokyo average price of 458 and an average price outside those cities of 484 -- only a 26-yen difference.<sup>59</sup> Indeed, as shown in Figure 14, many cities show lower average prices than Tokyo and Osaka.

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<sup>56</sup> Exhibit 12 contains a map showing the regions covered by the Camera Times survey.

<sup>57</sup> In 1994, the difference was even smaller: the average price in Tokyo and Osaka was 464 yen while the country-wide average not including those cities was 470 yen.

<sup>58</sup> Based on monthly editions of Photo Market 1995 for April, May, and June (showing prices for January, February and March) which are provided in Exhibit 3.

<sup>59</sup> Relevant pages from the 1994 Annual Report on the Retail Price Survey appear at Exhibit 2.

Kodak's contention that the Nippon Research data relied upon by Fujifilm are not representative of the overall Japanese market is thus demonstrably untrue. The specific outlets surveyed by Nippon Research are located in cities and prefectures accounting for a substantial portion of the Japanese film market: 40 percent of the total volume sold. Moreover, many of those outlets are members of multi-store chains that have broad regional or even nationwide coverage. For these chains, prices outside Tokyo and Osaka are not significantly different from prices in those cities. The similarity of prices within and outside Tokyo and Osaka is further confirmed by the MIC and Fujifilm 10-city surveys as well as published data -- including the Government of Japan survey data relied upon by Kodak. Any way you slice it, Kodak's attempts to discredit the Nippon Research data are unavailing.

2. Price competition is vigorous outside Tokyo and Osaka

Contrary to Kodak's claims, the reason that, film prices within and outside Tokyo and Osaka are similar is simple: price competition is alive and well all over Japan. Large discount and supermarket chains operate on a nationwide basis. Their cost structures and marketing strategies allow them to offer film at aggressive prices, and this in turn imposes competitive discipline on traditional specialty outlets. The result is nationwide availability of cheap national brand film, even cheaper film in multipacks, and rock-bottom prices for private brand film. Japanese consumers who want to buy film at bargain prices can do so throughout the country, not just in the two largest cities.

a. Bargain priced multipacks are available throughout Japan

As we discussed above, multipacks represent a significant bargain opportunity for price-conscious Japanese consumers. Kodak itself admits that the per-roll price of multipacks is much more heavily discounted relative to single pack prices in Japan than in the United States.<sup>60</sup> By asserting that price competition outside Tokyo and Osaka is nonexistent, Kodak is implying that multipacks are unavailable outside those two cities.

Kodak's implication is wrong. In Fujifilm's 10-city survey discussed above, prices were collected for single packs and various forms of multipacks. Exhibit 11, containing the 10-city survey results, shows that multipacks are sold throughout the country, as multipack data were collected from every city surveyed. The 10-city survey also shows, as depicted in Figure 15, that the per-roll price of film declines as more rolls are added to the pack. The per-roll price of Fujifilm's ISO 100 film decreases by nearly 200 yen when sold in 3-packs; ISO 400 drops by nearly 150 yen.<sup>61</sup>

The bottom line is that multipacks are available all over Japan -- and the same price structure applies all over Japan, too.

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<sup>60</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P7, n. 12.

<sup>61</sup> The Nippon Research data at Exhibit 9 and the MIC data at Exhibit 10 confirm these quantity discounts.

b. Private brand and dual brand film is available throughout Japan

The extent of price competition nationwide is further underscored by the widespread availability of private brand and dual brand film -- film that carries the name of the store and is offered at lower prices than name-brand film. ("Dual brand" film has the name of both the store and the manufacturer.) Although first introduced in Japan as recently as 1994, these low priced store brand films have enjoyed meteoric growth in Japan. Agfa, on the strength of its private brand sales, went from basically a zero share in 1993 to 5 percent of the total Japanese market in 1994.<sup>62</sup> Agfa's success can be attributed in part to its decision to sell its private brand film through Daiei. The Daiei supermarket chain, with 358 outlets in 43 prefectures, sells its private brand Agfa product in 3-packs for 149 yen per roll of ISO 100 film and 199 yen per roll of ISO 400.<sup>63</sup> Lawson, a Daiei-owned convenience store chain with 5,360 outlets in 41 of Japan's 47 prefectures, also sells the private brand Agfa product in single packs for 298 yen per roll of ISO 400.<sup>64</sup> Since Daiei led the way, many other national chains have gotten into the act:

- Seiyu, another supermarket chain, has 210 outlets in 23 prefectures. It sells Kodak-supplied dual brand ISO 100 2-packs at 245 yen per roll.
- Jusco, a supermarket chain that carries a private label product produced by 3M, has 249 outlets in 33 prefectures. It sells its ISO 100 private label product in 3-packs at 152 yen per roll.

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<sup>62</sup> "Rewriting History" at 187.

<sup>63</sup> All references in this section to "rolls" are to 24-exposure rolls.

<sup>64</sup> Fujifilm salespeople estimate that private brand film now outsells the Fuji brand at Daiei supermarkets.

- Kitamura, a large camera store chain with 247 outlets in 36 prefectures, sells Agfa-supplied private brand film. It sells ISO 100 single packs at 198 yen, and ISO 100 3-packs at 166 yen per roll.
- Shashinya-san 45, another camera store chain with 354 directly owned outlets and 99 additional franchise stores in a total of 11 prefectures, also sells Agfa-supplied private brand film. It offers private brand ISO 100 single packs at 300 yen, and private brand ISO 400 single packs at 350 yen.
- Family Mart, a convenience store chain with a dual brand produced by Kodak, has 3,694 outlets in 31 prefectures; it sells the ISO 100 dual brand product in 2-packs for 245 yen per roll.<sup>65</sup>

While Kodak admits the growth in private brand film,<sup>66</sup> it would have us believe that this development is confined to Tokyo and Osaka. But, as is evident from the list above, private and dual brand film is offered by regional and national chains on -- unsurprisingly -- a regional and national basis. Figure 16 shows the prefectures in which private or dual brand film is offered of the chains listed above.<sup>67</sup> These chains cover every prefecture in Japan, many times over, and they charge the same for their store-brand film in all outlets.<sup>68</sup>

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<sup>65</sup> Various other multi-chain stores also carry private or dual brand film. Among these is Nichiryu, a cooperative purchasing association of supermarket chains, which comprises at least 977 outlets in at least 30 prefectures. Many Nichiryu member stores sell Kodak-supplied dual brand ISO 100 3-packs and ISO 400 2-packs. Prices vary according to the member chain, but suggested prices are 249 yen per roll for ISO 100 and 295 yen per roll for ISO 400.

<sup>66</sup> "Privatizing Protection" at 146.

<sup>67</sup> Exhibit 13 shows in tabular form the precise number of outlets per prefecture.

<sup>68</sup> For example, Exhibit 14 shows a 1994 announcement by Daiei of nationwide prices for its ISO 400 3-pack private brand film. Also included in the exhibit is an August 31, 1995 article from Nihon Keizai Shimbun announcing Daiei's current price for this product.

Thus, price competition at its most intense -- bargain multipacks and private brand film at rock-bottom prices -- can be found all over Japan. Nothing could demonstrate more pointedly how totally wrongheaded Kodak's portrayal of the market really is. There is no bright line dividing Tokyo and Osaka from the rest of Japan. The price data presented by Fujifilm in its October 24, 1995 submission are representative of the overall Japanese market.

The facts provided here confirm what logic would predict. Kodak itself concedes that price competition is healthy in Tokyo and Osaka; indeed, it refers to these two cities as competitive "shark tanks." Kodak asserts, however, that price competition somehow peters out at the Tokyo and Osaka city limits; in the rest of Japan, according to Kodak, all is monotonous collusion.

A moment's reflection will show that Kodak's attempted distinction does not make any sense. Once Kodak admits that Tokyo and Osaka are competitive, it has started down a slippery slope that leads inescapably to Fujifilm's position. What distinguishes Tokyo and Osaka from other major cities in their larger metropolitan areas -- like Yokohama, Kyoto, and Kobe? And what possible difference could there be between Osaka -- the smaller of Kodak's competitive duo -- and many other large urban areas in Japan? What divides Osaka -- where Kodak admits that competition flourishes -- from cities like Sendai, Fukuoka, Nagoya, Hiroshima, and Sapporo where, supposedly, competition is nonexistent? And why would Fujifilm, whose masterful conspiracy has purportedly extinguished price competition

everywhere else, pause before Tokyo and Osaka and leave them be? Kodak's argument smacks of lawyerly desperation, not reasoned analysis of the facts.

The fact is that Japan is a highly urban country: 63 percent of the population lives in areas with a population density of 4,000 or more people per square kilometer.<sup>69</sup> It makes sense, therefore, that such urban areas account for nearly 70 percent of the total film sales volume.<sup>70</sup>

In these urban areas one would fully expect there to be -- just like in Tokyo and Osaka -- outlets of large supermarket and mass-merchandiser chains whose economies of scale and marketing strategies allow them to sell film at low prices. These outlets, in turn, impose competitive discipline on the photo specialty stores, limiting the premium they can charge for their expertise and superior service.

These common-sensical expectations are borne out by the facts. The price competition that Kodak admits exists in Japan's two largest cities does not stop there; it is found all over Japan. Fujifilm's analysis of pricing patterns in Japan is vindicated.<sup>71</sup>

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<sup>69</sup> Exhibit 15 (containing information from 1990 Population Census of Japan regarding densely inhabited districts).

<sup>70</sup> Exhibit 16. To perform this calculation, we used the prefecture sales percentages provided in Photo Market 1995 at 204 (Exhibit 7 hereto). For each prefecture we multiplied the sales percentage by the percentage of people in that prefecture living in densely populated areas. This methodology assumes that within each prefecture, film sales are distributed uniformly across the population -- a conservative assumption.

<sup>71</sup> The existence of competition throughout the Japanese market is not something Fujifilm is making up with the use of manipulated data. It is a phenomenon that several industry analysts have observed. This year Reuters reported the conclusions of two industry analysts regarding competition in Japan. James Grey of Jardine Fleming Securities found that "Japan's film market clearly is competitive, because there is a high degree of price competition as evidenced by the rapid price declines of the past few years and the fact that Agfa ... has been able to expand rapidly in the market." Linda Sieg, "Kodak Said to be Fighting Japan Battle of the Past," Reuter Asia-Pacific Business Report (July 4, 1995). A

D. Kodak's Analysis Of Price Trends Suffers The Same Flaws As Its Analysis Of Price Levels

Kodak makes the argument again in its November 6, 1995 submission that prices in Japan have remained "extraordinarily stable" over time.<sup>72</sup> To prove its point, Kodak again refers to GOJ price survey data in 1992 and 1994, which show that reported prices in the majority of cities surveyed did not change over a two year period. Kodak seems to think it has really outwitted Fujifilm when it says in its pricing appendix: "Noticeably absent from Fuji's extensive and documented data [footnote omitted] is any rejoinder to the Japanese Government data presented by Kodak which show extraordinarily stable prices in 167 cities from 1992 to 1994."<sup>73</sup>

In our October 24, 1995 submission, we made the elementary economic point that Kodak's "stability" analysis fails to account for inflation. If the overall price level is rising, then flat nominal prices mean falling real prices.<sup>74</sup> Even ignoring inflation, though, Kodak's crude, one product, two-year time series analysis proves nothing.

(..continued)

company report on Fujifilm by Barclays De Zoete Wedd Securities found that Fujifilm's earnings are threatened by increasingly strong price competition and consequent falling price levels. Barclays De Zoete Wedd Securities, Company Report (Fuji Photo Film Co., Ltd.) (April 12, 1995). Another industry analyst was quoted as having urged investors in Japan to "sell the [Fuji] stock because increasing competition [in the film market] will lead to lower prices in Japan and thus lower profits for Fuji." Gannett News Service (July 2, 1995). Several years ago, then-Secretary of Commerce Robert Mosbacher was quoted in the Japanese Economic Journal as stating that "enormous competition on price" existed in the Japanese film market. "Domestic Demand Strong in FY88 Ended April," Japan Economic Journal (April 29, 1989).

<sup>72</sup> Kodak's November 6, 1995 submission, Pricing Appendix, at P16.

<sup>73</sup> Id.

<sup>74</sup> Fujifilm's October 24, 1995 submission at 12-13.

In the first place, the GOJ survey data used by Kodak expressly excludes "low prices due to bargain, clearance, discount sales, etc."<sup>75</sup> It is small wonder that this survey shows flat prices, since the chief source of real-life price volatility -- occasional or seasonal promotions -- has been eliminated. Kodak's conclusion that prices are unchanging is merely an artifact of the incompleteness of its data.

Furthermore, Kodak's analysis omits all of the products and outlets that have been subject to the most intense price competition. Kodak limits its analysis to ISO 100 film sold in single packs at photo shops -- a rapidly declining product/packaging/outlet combination in the Japanese market. Kodak keeps using this combination in its analysis but, in doing so, Kodak is quite obviously trying to pull the wool over USTR's eyes. Kodak ignores the fastest growing parts of the market: ISO 400, multipacks, discount stores, and private/dual brand film. As discussed above:

- ISO 400 skyrocketed from 9.3 percent of the market in 1988 to 47.5 percent in 1994. Even Kodak admits that this surge is due to aggressive promotion by Fujifilm. And as shown in Figure 6, in Japan ISO 400 film is priced more aggressively relative to ISO 100 than it is in the United States.
- Multipack sales have grown rapidly, now accounting for roughly 40 percent of film sales in Japan. As shown in Exhibit 7, the percentage of ISO 100 film sold in multipack form grew from 3 percent in 1989 to 47 percent at the end of 1995; multipacks have accounted for roughly half of ISO 400 film sales throughout the 1990s, and have ridden the surging popularity of ISO 400 during this period. As shown in Figure 7, the gap in per-roll prices between single packs and multipacks is bigger in Japan than in the United States.
- Photo stores, the specialty outlets with the highest prices, have dropped 10 percentage points in market share over the past decade:

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<sup>75</sup> Annual Report on the Retail Price Survey at 677 (attached at Exhibit 2).

from 60 percent in 1985 to 50 percent in 1994. Discount stores and supermarkets -- the outlets with the lowest prices -- have grown from 19 percent of the market to 23 percent over the same period.<sup>76</sup>

- Private and dual brand films have experienced explosive growth in 1994. Agfa, the leading supplier of private brand film, saw its market share in Japan jump from basically zero to 5 percent in a single year on the strength of its private brand sales. As shown in Section C above, this film is sold at very cheap prices.

Again, Kodak's conclusions are merely a function of its conscious decision to ignore all contradictory data -- a very convenient way to prove one's point. By contrast, an analysis of overall market conditions shows not only that price competition is endemic in Japan, but also that its intensity has been growing rapidly over the past several years.

### **CONCLUSION**

All of Kodak's attacks on Fujifilm's October 24, 1995 pricing analysis have failed. Its charge that the price information supplied by Fujifilm is unreliable is disproved by, among other things, the data on which Kodak relies. Its attempt to defend its comparison of specialty store prices in Japan to discount prices in the U.S. ignores the clear segmentation of both the Japanese and U.S. markets along service-conscious versus price-conscious lines. Its rationalizations about ignoring ISO 400 film and multipacks are a transparent diversionary tactic. Finally, its argument that prices in Tokyo and Osaka are aberrational has been demolished -- again in part by the very price data it relies upon.

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<sup>76</sup> Photo Market 1995 at 130.

Today's submission thus confirms and indeed invigorates the bottom-line conclusion of our October 24, 1995 submission: price levels in Japan and the United States are similar. Kodak's claim that prices in Japan are uncompetitively high does not square with the facts.